FOREST APPEALS COMMISSION

PROCEDURE MANUAL

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APPENDIX A - Form 1 - Notice of Appeal

DISCLAIMER

The legislation referred to in this Manual is subject to amendment from time to time and to judicial interpretation. The Manual may not reflect recent amendments to the legislation and should not be relied upon as an accurate statement of the existing law. It is a guide to the Commission's practices and procedures only. An official version of the legislation may be obtained from Crown Publications.

1.0 INTRODUCTION

The Forest Appeals Commission was established under section 194 of the *Forest Practices Code of British Columbia Act* (the "*Code*"), which came into effect on June 15, 1995. In 2004, the *Forest and Range Practices Act* (the "*FRPA*") was brought into force. *FRPA* will replace the *Code* in December 2005. However, the process of transition from the *Code* to the *FRPA* began in December 2002.

The *FRPA* states that the Commission is continued under section 194 of the*Co de*, and the *FRPA* incorporates many of the Commission's powers and procedures set out in the *Code*.

The Commission is an independent appeal tribunal with statutory authority to hear appeals from administrative decisions made with respect to a variety of matters regulated by the *FRPA*, the *Forest Act*, the *Range Act*, the *Wildfire Act* and the *Private Managed Forest Land Act*. The Commission will also continue to hear appeals with respect to matters regulated by the *Code* until that Act is phased out in December 2005.

The formal requirements of the appeal process for appeals under the *FRPA* and the *Code* are set out in Part 6 of the *FRPA*, Part 6 of the *Code* and Part 3 of the Administrative Review and Appeal Procedure Regulation (the "Regulation"). The formal requirements of the appeal process for appeals under the *Forest Act* and the *Range Act* are set out in Part 12 of the *Forest Act* and section 70 of the *Range Act*, respectively, and Part 3 of the Regulation. The formal requirements for appeals under the *Wildfire Act* are set out in Part 3 of that Act, Part 6 of the *Code*, and Part 3 of the Regulation. Finally, the formal requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that Act.

In addition to hearing appeals, the Commission is also required to produce an annual report by April 30 of each year, which is provided to the Legislative Assembly. The Commission has a statutory mandate to include, in each annual report, an evaluation of the review and appeal processes identifying any problems that have arisen and making recommendations, if any, regarding the need for amendments to the sections of the *Code* and the regulations enacted under the *Code* which set out the Commission's powers and procedures. It is also required to include information about the appeals filed and heard during that year under the *Forest Act*, *Range Act*, the *Code* or *FRPA*. A

copy of the annual report may be obtained from the Commission office.

In order to ensure that the appeal process is open and understandable to the public, the Commission has developed this Manual. It contains information about the Commission itself, the legislated procedures that the Commission is required to follow and the policies the Commission has adopted to fill in the procedural gaps left by the legislation.

Those involved in the appeal process can expect the Commission and its members to follow the legislated procedures (as may be amended from time to time) and Commission policies set out in this Manual. Where any matter arises during the course of an appeal that is not dealt with in this document, the Commission will do whatever is necessary to enable it to adjudicate fairly, effectively and completely on the appeal. In addition, the Commission may dispense with compliance with any part or all of a particular procedure where it is appropriate in the circumstances.

The Commission will make every effort to process appeals in a timely fashion and issue decisions expeditiously. Your attention to the procedures and policies outlined in the Manual will assist the Commission in achieving this goal.

2.0 THE COMMISSION

Members

Part 9 of the *Code* establishes the Commission. The Commission is made up of a full-time chair, one or more part-time vice-chairs and a number of part-time members. Pursuant to the *Administrative Tribunals Appointment and Administration Act* that came into force in February of 2004, the chair is appointed by Cabinet, after a merit based process, for an initial term of three to five years. The vice-chair and other part-time members are appointed by Cabinet, in consultation with the chair, after a merit based process for an initial term of two to four years. All of the members may be reappointed for additional terms of up to five years.

The Commission members bring with them a wide range of backgrounds and perspectives.

Organizing Panels

Section 195 of the *Code* states that the chair may organize the Commission into panels, each comprised of one or more members. Normally, panels are composed of 1 or 3 members.

Where an appeal is scheduled to be heard by a panel of the Commission, the Regulation states that the panel chair is determined as follows:

(a) if the chair of the Commission is on the panel, he or she is the panel chair;

(b) if the chair of the Commission is not on the panel but a vice-chair of the Commission is, the vice-chair is the panel chair;

(c) if neither the chair nor a vice-chair of the Commission is on the panel, the Commission must designate one of the panel members to be the panel chair.

If members of the Commission hear an appeal as a panel, the panel has all the powers and obligations given to the Commission. Further, an order, decision or action of a panel is deemed to be an order, decision or action of the Commission.

Withdrawal or Disqualification of a Commission Member on the Grounds of Bias

Where the chair or a Commission member becomes aware of any facts that would lead an informed person, viewing the matter reasonably and practically, to conclude that a member, whether consciouslyor unconsciously, would not decide a matter fairly, the member will be prohibited from conducting the appeal unless consent is obtained from all parties to continue. In addition, any party to an appeal may challenge a member on the basis of a real or a reasonable apprehension of bias.

To raise an allegation of bias or another ground for disqualification during a hearing, that party should make a motion to the panel. All parties will be given an opportunity to make submissions on the motion before a decision is rendered.

If it is determined that the allegation has been made promptly and has merit, the Commission member will disqualify him/herself and withdraw from the panel hearing the appeal unless consent is obtained from all parties for that member to continue. If the parties do not consent, the hearing may be adjourned until a new member is appointed to the panel by the chair.

Correspondence (Communicating) with the Commission

To ensure that the appeal process is kept open and fair to the participants, any correspondence to the Commission in relation to an appeal must be sent to the Commission and be copied to all other parties to the appeal.

Commission members will not contact a party, accept personal telephone calls from a party or attend private meetings with a party on any matter related to an appeal, unless that member puts all other parties on notice and gives them an opportunity to participate.

Commission Office

The Commission shares an office and its staff with the Environmental Appeal Board. The combined office has a small full-time staff consisting of an Executive Director, Registrar, Office Administrator, Manager of Research and Mediation, Research Officer, and support staff.

Since December 2004, the office also shares it space and staff with two additional tribunals: the Hospital Appeal Board and the Community Care and Assisted Living Appeal Board.

Any questions regarding an appeal or a practice or procedure of the Commission should be directed to this office. The office is located at:

4th Floor, 747 Fort Street
Victoria, British Columbia
V8W 3E9
Phone: (250) 387-3464
Fax: (250) 356-9923
Internet: http://www.fac.gov.bc.ca

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria, British Columbia
V8W 9V1

3.0 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

The appeal process is public in nature. Information provided by one party must also be provided to all other parties to the appeal. Further, the hearings are open to the public.

If a member of the public requests information regarding an appeal, that information may be disclosed. The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act.

Unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act* it will be disclosed. Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

4.0 THE APPEAL PROCESS

4.1 Filing an Appeal

What can be appealed

The Commission has jurisdiction to hear appeals made under the *FRPA*, the *Wildfire Act*, the *Private Managed Forest Land Act*, the *Forest Act* and the *Range Act*. The Commission will also continue to hear appeals of decisions made under the *Code* until that Act is phased out. The types of decisions that may be appealed to the Commission vary from statute to statute. To determine whether a particular decision may be appealed to the Commission, the statute under which the decision was made must be consulted. In some cases, the decisions must have undergone a review prior to filing an appeal with the Commission.

Who can appeal

The people or organizations with "standing to appeal" varies from statute to statute. To determine whether you may appeal a decision to the Commission, the statute under which the decision was made must be consulted.

How to appeal

The procedures for filing an appeal with the Commission vary slightly. However, the process always begins with the filing of a notice of appeal. This is done by delivering a notice of appeal to the Commission office.

"Delivered" includes mail, courier, or hand to the Commission office [*Interpretation Act*].

The procedure for filing an appeal under the *Private Managed Forest Land Act* have are found in the *Private Managed Forest Land Regulation*.

For appeals under *FRPA*, the *Code*, the *Forest Act* and the *Range Act* a notice of appeal must comply with the content requirements of the Regulation. The Regulation states that certain things must be included in a notice of appeal for it to be accepted. The notice of appeal **must** include:

1. the name and address of the appellant;

2. the name of the person, if any, making the request for an appeal on behalf of the appellant;

3. the address for giving a document to,or serving a document on, the appellant;

4. the grounds for appeal (a detailed explanation of the appellant's objections to the determination – describe errors in the decision);

5. a statement describing the relief requested (what you want the Commission to order at the end of the appeal); and

6. the signature of the appellant or of a person acting on behalf of the appellant.

A recommended form of notice of appeal is attached to this Manual as Form 1.

In addition, a copy of the determination, order, decision reviewed or corrected order (including a review decision) appealed from must be included with the notice of appeal.

Incomplete (deficient) notice of appeal

If the notice of appeal does not contain the required information, it is considered deficient. When the Commission receives a deficient notice of appeal, it will invite the appellant to submit further material to remedy the deficiencies within a period specified in a written notice of deficiencies. The Commission will not take any action on the appeal until the notice is complete.

If the deficiencies identified by the Commission are not corrected by the date specified in the notice of deficiencies, the Commission may deem the appeal to be abandoned.

Appeal fee

There is no fee required for filing an appeal with the Commission.

Time limit for filing the appeal

The time limit for filing an appeal with the Commission can vary from statute to statute.

The notice of appeal must be delivered to the Commission office within the time limit specified in the Act.

However, under certain statutes, before or after the time limit expires, the chair or a member of the Commission may extend it. The statue authorizing the appeal should be consulted to determine whether the Commission has a power to extend the time for filing an appeal.

Extension of time to appeal

If the chair or a member of the Commission has the power to extend the statutory time period for filing an appeal, an appellant in need of an extension must make a request to the Commission.

The request for an extension should be made to the Commission, in writing, and include the reasons for the delay in filing the notice of appeal and any other reasons which the requester believes support the granting of an extension of time to file the appeal. A request for an extension should accompany the notice of appeal.

The Commission may provide potential parties to the appeal with an opportunity to respond to the requester's submissions before the Commission makes its decision.

In deciding whether to grant an extension, the Commission will consider whether fairness requires an extension. The Commission will take into account the length of the delay, the adequacy of the reasons for the delay, the prejudice to those affected by the delay and any environmental impacts that may result from an extension. Other factors not identified could be relevant depending on the circumstances of the particular case.

Rejection of a notice of appeal

The Commission may reject a notice of appeal if:

(a) it is determined that the appellant does not have standing to appeal; or

(b) the Commission does not have jurisdiction over the subject matter or the remedy sought.

Before a notice of appeal is rejected, the Commission will inform the appellant of this in writing, with reasons, and give the appellant an

opportunity to make submissions and any potential parties with an opportunity to respond.

4.2 Procedure Following Receipt of Notice of Appeal

Notification of the appeal

Once a **complete** notice of appeal is received, the Regulation require the Commission, within 30 days after receipt of the notice of appeal, to acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests;

(b) in the case of an appeal under the *FRPA*, the *Code* or the *Wildfire Act*, give a copy of the notice of appeal to the Minister of Forests;

(c) in the case of an appeal under the *FRPA*, the *Code* or the *Wildfire Act*, give a copy to the Forest Practices Board, if the notice of appeal was delivered by the person who is the subject of the determination; and

(d) in the case of an appeal under the *FRPA*, the *Code* or the *Wildfire Act*, give a copy to the person who is the subject of the determination, if the notice of appeal was delivered by the Forest Practices Board.

Procedures for appeals under the *Private Managed Forest Land Act* are set out in that Act and the regulation under that Act.

Parties to the appeal

For appeals under the *FRPA*, the *Code* and the *Wildfire Act* the government, the person who is subject to the determination or order and the Forest Practices Board, if it so requests, will have the right to fully participate in an appeal as parties to the appeal. If the Forest Practices Board initiates the appeal, then the person subject to the determination will be included as a third party to the appeal. Alternatively, where the appellant is the person who is subject to the determination, then the Forest Practices Boardwi ll be named as a third party to the appeal, at the Board's request.

For appeals under the *Forest Act* and *Range Act*, only the appellant and the government are parties to the appeal.

For appeals under the *Private Managed Forest Land Act*, the appellant and the Private Managed Forest Land Council are parties to the appeal.

In all cases, the appellant is the party that initiates the appeal by filing a notice of appeal with the Commission. The respondent is the official who made the decision under appeal. Third parties are all other parties to the appeal.

Representatives/Legal Counsel

A party may be represented by legal counsel, may represent him/herself or have any other person as his/her spokesperson or agent.

Adding parties to the appeal

Under some statutes, the Commission or a member of it has the discretion to add as a party to the appeal any other person who may be "affected," or in some cases, "directly affected," by the appeal.

Requests for party status should be made as soon as possible after the appeal is filed. Requests made too close to a hearing date will usually be denied unless special circumstances are shown to exist.

A person seeking to be added as a party to an appeal must make a written request to the Commission. The written request should contain the following information:

(a) the name, address, telephone and fax number, if any, of the person submitting the request;

(b) if the person submitting the request intends to be represented by a lawyer or agent, the name, telephone number and fax number of the lawyer or agent;

(c) a detailed description of how the person is affected by the subject matter of the appeal **and** explain why the person should be included in the appeal; and

(d) the signature of the person submitting the request.

Prior to permitting a person to participate in an appeal as a party, the Commission will provide the other parties to the appeal with an opportunity to make representations.

In deciding whether to add a person as a party, the Commission will consider whether the person meets any test for adding a party that is provided in the legislation (e.g. "affected" or "directly affected"), has relevant evidence to provide to the Commission, and any other factors that are relevant in the circumstances.

Intervenor status

Under some statutes, the Commission has the discretion to invite or permit a person to participate ina hearing as an intervenor. Intervenors are generally individuals or groups that do not meet the criteria to become a party but have sufficient interest in, or some relevant expertise, in relation to the subject matter of the appeal. A test for being added as an intervenor may also be set by statute (e.g. *Private Managed Forest Land Act*).

To take part in an appeal as an intervenor, send a written request to the Commission. The written request should contain the following information:

(a) the name, address, telephone and fax number, if any, of the person submitting the request;

(b) if the person submitting the request intends to be represented by a lawyer or agent, the name, telephone number, fax number of the lawyer or agent;

(c) a description of how the person submitting the request can be impacted or affected by the subject matter of the notice of appeal or a description of the nature of the person's interest or expertise in the subject matter of the notice of appeal;

(d) reasons in support of that persons participation in the appeal; and

(e) the signature of the person submitting the request.

Requests for intervenor status should be made as early as possible. If the request is made late, the Commission will consider whether there are sound reasons for the delay.

Prior to inviting or permitting a person to participate in a proceeding as an intervenor, or deciding on the extent of that participation, the Commission will provide all parties with an opportunity to make representations.

In deciding whether to add someone as an intervenor in an appeal the Commission will consider whether the person will assist the Commission by offering evidence or argument relevant to the appeal, whether their participation will unnecessarily delay the appeal, whether their evidence or argument will repeat or duplicate evidence or argument presented by other parties, and any other factors which are relevant in the circumstances or required by the statute authorizing the appeal to the Commission.

Where the Commission invites or permits someone to intervene in a hearing the Commission will:

(a) give the intervenor written notice specifying the extent to which it will be allowed to take part in the hearing;

(b) give the parties to the appeal written notice stating that the intervenor has been invited or permitted to take part in the hearing; and

(c) specifying the extent to which the intervenor will be permitted to take part in the hearing.

Constitutional Question

If a party or intervenor intends to raise a question about the constitutional validity or applicability of a statute, regulation, bylaw or common law rule, or claim a remedy under section 24(1) of the *Canadian Charter of Rights and Freedoms*, that party must deliver written notice to the Commission 14 days before raising the constitutional question.

A party or intervenor raising a constitutional question must also comply with the *Constitutional Question Act*, R.S.B.C. 1996, c. 68, by delivering a notice of constitutional question to the other participants in the hearing process and the Attorneys General of Canada and British Columbia.

Type of appeal (written or oral) hearing

An appeal may be conducted by way of written submissions, an oral hearing or a combination of both. The Commission will determine the appropriate type of appeal after a complete notice of appeal has been received.

The Commission will normally conduct an oral hearing although it may order that a hearing proceed by way of written submissions in certain cases. Where the Commission is considering a hearing by written submissions, the Commission may request input from the parties.

If a party wants to request that an appeal be conducted by oral hearing, written submissions, or a combination of both, the request should be communicated to the Commission within a reasonable time of the complete notice of appeal being received, and it should provide reasons in support of the type of appeal procedure proposed.

Joining appeals

Where the Commission considers that two or more appeals are related to each other, or that some or all of the parties are the same, it will consider joining the appeals to be heard together.

The Commission will notify all parties if it decides to join the appeals. Objections may be made to the Commission, in writing.

Timeline for holding a hearing

After receipt of a complete notice of appeal, the Commission is required to hold a hearing within a prescribed period (45 days) for appeals under the *Forest Act* and the *Range Act*, unless the parties agree to a different time period. There is currently no prescribed period for appeals under any of theot her statutes from which the Commission hears appeals.

Despite any prescribed periods, if the Commission determines that the notice of appeal does not comply with the content requirements, or that there was a failure to disclose facts and law if required by the statute or regulations, it need not hold a hearing within the prescribed period. However, the Commission must hold a hearing within the prescribed period as soon as a notice of appeal is received that complies with all of the content requirements.

4.3 Written Hearing Procedure

Scheduling written submissions

In some cases, the Commission will decide that an oral hearing is not required and will order that the appeal be conducted in writing. In a written hearing, all evidence and argument are provided in writing. Reasons for ordering a written hearing may include the expense of an oral hearing, the issues raise a question of law only, or credibility is not a significant issue.

Where the Commission determines that the appeal can fairly be heard by way of written submissions, it will provide the parties with a submission schedule. In making the schedule, the Commission will ensure that each party to the appeal is given an opportunity to review the written submissions from the other parties and is given an opportunity to respond to those submissions from parties adverse in interest. The submissions will normally be scheduled to proceed in the following order:

(1) appellant's submissions

(2) respondent's, third party's and intervenor's submissions

(3) appellant's submissions in reply

(4) closing comments (no new evidence is to be included).

In certain cases, the Commission will ask that closing comments be included with the party's submissions in order to expedite the proceeding.

All parties and intervenors must deliver their submissions by the dates specified. The written hearing is over once the deadlines have expired for making submissions.

Although not specifically set out in this section, many of the procedures and provisions described in section 4.4 under "Oral Hearing Procedure" are also applicable to written hearings, except for the statement of points.

If a party wishes to request that the appeal be heard by way of written submissions, that party should make its request to the Commission as soon as possible in the process and provide reasons in support of this type of appeal procedure being adopted for the appeal.

Extension of time to make submissions

If a party is not able to deliver its submissions by the date specified by the Commission, the party can request an extension of time to file its written submissions. The request should be made in writing prior to the specified deadline. The request should include the following information:

(a) the reasons for extension;

(b) the length of the extension; and

(c) whether the other parties to the appeal consent to the extension.

If the other parties do not consent to the extension, they may be provided with an opportunity to make submissions with respect to the extension.

In deciding whether to grant an extension, the Commission will consider the adequacy of the reasons given for the extension, the prejudice to the other parties, and any environmental or other impacts that may result from an extension.

If an extension of time is granted to one party, the submission schedule for the other parties will be similarly extended. The Commission will inform all parties of the revised schedule, in writing.

Failure to file submissions

If the **appellant** fails to deliver a written submission by the date specified (as extended), the Commission may dismiss the appeal.

If the other parties to the appeal fail to deliver the written submission by the specified date, the Commission may make a decision without hearing from those parties.

Content of written submissions

Where an appeal is conducted in writing, the parties will be required to present their **entire** case in writing. This means that all evidence (which includes all means of proof including correspondence, maps, charts, graphs, affidavits, studies, reports etc.), legal authorities and argument that the party wants the Commission to consider must be

included in the submissions (for further information see section 4.4.2, "Evidence").

Where there is more than one evidentiary document or legal authority provided with the submission, the documents and authorities should be numbered consecutively and the number should be referenced, where applicable, in the written text.

Prior to making a decision, the Commission will consider each party's submissions, weigh the evidence provided and apply the correct burden of proof (see "Burden ofPr oof", below).

Note: The Commission does not automatically receive the evidence and argument considered by the reviewer or the original decision-maker. If a party wants to ensure the Commission considers these materials, the party must submit them to the Commission as part of its case or ensure that one of the other parties has done so.

Role of precedent (Previous decisions of the Commission)

Although the Commission may be bound by the decisions of certain courts, it is not required to follow (is not bound by) its past decisions or the decisions of other administrative agencies. While prior decisions of the Commission may indicate how the Commission will view particular types of cases, as a matter of law, it must decide each case on its own merits.

Burden of proof

The general rule is that the burden or responsibility for proving a fact is on the person who asserts it. The fact is to be proved on a "balance of probabilities."

Public access

In written hearings, the evidence, written submissions and decisions arising from the appeal are available to the public upon request. Photocopying charges may be required for such requests.

4.4 Oral Hearing Procedure

Pre-hearing

Scheduling an oral hearing

The chair will determine which member(s) of the Commission will hear an appeal, and the Commission will set the date, time and location of the hearing within any prescribed time period, and otherwise, as expeditiously as possible in the circumstances.

The Commission's Registrar will normally consult with parties as to their availability on specific dates. A reasonable attempt will be made to accommodate the parties scheduling needs. However, the primary responsibility of the Commission is to accomplish its statutory mandate by giving parties a hearing promptly, or within the prescribed period, if any.

An oral hearing may be held at the Commission office in Victoria or anywhere else in the Province. The Commission will decide where the hearing will take place on a case- by-case basis.

The Commission will, where possible, attempt to accommodate expedited hearing requests. Requests for an expedited hearing should be made in writing and include the reasons for the urgency.

The Commission will consider the expedited hearing request having regard to the other parties' right to proper notice of the appeal and the hearing, and the rights of other appellants who are awaiting hearings.

Stays pending appeal

The Commission does not have the authority to grant a stay pending an appeal.

However, under many of the statues referring appeals to the Commission, the decision being appealed does not become effective until the person who is the subject of the decision has no further right to have the determination reviewed or appealed.

Statement of Points and exchange of documents

In order to facilitate identification of the main issues and arguments in an appeal and ensure the hearing proceeds in an efficient and expeditious fashion, the Commission will send a letter to the parties

asking for a summary of each party's case (Statement of Points) and their documents.

The Commission will ask the appellant(s) to deliver its Statement of Points and its documents to the Commission, **and each** party to the appeal, at least **30** days prior to the commencement of the hearing.

The respondent(s), and all other parties to the appeal, will be asked to deliver their respective Statement of Points and documents to the Commission, **and each** party to the appeal, at least **15** days prior to the commencement of the hearing.

Statement of Points

The Commission asks for the following information to be contained in the statement of points:

(a) The appellant should outline:

(i) the substance of the appellant's objections to the decision of the respondent;

(ii) the arguments which the appellant will present at the hearing;

(iii) any legal authority or precedent supporting the appellant's position; and

(iv) the names of the people the appellant intends to call as witnesses at the hearing.

(b) The respondent should outline:

(i) the substance of the respondent's objections to the appeal;

(ii) the arguments which the respondent will present at the hearing;

(iii) any legal authority or precedent supporting the respondent's position; and

(iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional parties and intervenors will be asked to provide a statement of points containing the above-noted information as may be relevant to that party or intervenor.

Where a party has not provided the Commission with a statement of points by the specified date, the Commission may order the party to do so.

If an order is made and the appellant does not provide the statement of points by the time specified in the order, some statutes authorize the Commission to dismiss the appeal.

Documents

Parties are requested to disclose all relevant documents to the Commission and the other parties in advance of the hearing so that all parties will be prepared. Documents include correspondence, reports, articles, maps, photographs, charts and any other materials (e.g., legislation and policies) that may be referred to or relied upon at the hearing.

Where there is more than one document provided, the documents should be numbered.

The schedule for exchanging documents does not preclude the parties from the voluntary exchange of documents. If information or documents are needed before the date set by the Commission for the exchange of documents, or a party fails to provide a required document with its Statement of Points, the parties should arrange for copies of the documents to be provided or schedule a time to view the documents.

A party may request that the Commission require the production of documents by another party.

Pre-hearing conferences

When the parties to the appeal have been determined, the Commission may, on its own initiative or at the request of any of the parties to the appeal, schedule a pre-hearing conference prior to the date of the hearing. The Commission will normally schedule a pre-hearing conference in complex cases or in cases which involve numerous parties.

A pre-hearing conference may be conducted by telephone or in person, depending upon the circumstances. Attendance will generally be

limited to one member of the Commission and one representative from each party to the appeal. The Commission member who oversees the pre-hearing conference may or may not be a member of the panel that conducts the appeal. An official recorder will also be present to tape the conference.

Pre-hearing conferences provide the parties with an opportunity to clarify the hearing procedures, narrow the issues to be dealt with at the hearing, discuss any preliminary concerns and are intended to facilitate a just, expeditious and inexpensive disposition of the matter.

Some matters that may be discussed at a pre-hearing conference include:

- defining and simplifying the issues to be determined at the hearing;
- identification of witnesses;
- arranging for the exchange of documents and expert reports;
- admission of facts relevant to the hearing and consented to by the parties;
- admission of any evidence relevant to the hearing and consented to by the parties;
- determination of the day to day conduct of the hearing;
- determination of a date for further pre-hearing conferences prior to the hearing; and
- resolution of the appeal.

A request for a pre-hearing conference should be made in writing and include a list of the items the party wants addressed at the conference. The request should be made as soon as the number of parties has been determined and, in any event, no later than 30 days before the hearing.

Pre-hearing conferences are of limited value unless all parties come to the pre-hearing conference fully prepared for a useful discussion of all issues involved in the appeal, both procedural and substantive, and are authorized to negotiate and make decisions with respect to the issues. The Commission has no authority to compel parties to attend a pre-hearing conference nor participate if in attendance. To be

effective, the parties must be willing to attend and be open to discussion on the issues raised during the conference.

These provisions do not preclude voluntary meetings between the parties.

Notification of expert evidence

An expert witness is a person who, through experience, training and/or education, is qualified to give an opinion on certain aspects of the subject matter of the appeal. To be an "expert" the person must have knowledge that goes beyond "common knowledge."

The Commission requires any party that intends to present expert evidence at a hearing to provide the Commission, and all other parties to the appeal, with reasonable advance notice that an expert will be called to give an opinion. The notice should include:

(a) a brief statement of the expert's qualifications and areas of expertise;

(b) the opinion to be given at the hearing; and

(c) the facts on which the opinion is based.

If a party intends to produce a written statement or report prepared by an expert at the appeal hearing, a copy of the statement or report should be provided to the Commission, and all parties to the appeal, within a reasonable time before the statement or report is given in evidence. Unless there are compelling reasons for later admission, expert reports should be distributed 30 days prior to the hearing date.

Failure to provide reasonable notice of expert evidence, or expert reports, may result in an adjournment of the hearing or exclusion of the evidence.

Obtaining a summons

Arranging for the attendance of witnesses and production of documents and other evidence at a hearing must be performed by the parties. However, in some cases, a proposed witness refuses to voluntarily attend a hearing to testify or a party refuses to produce, or does not have access to, certain relevant documents.

The Commission has the power to summon and enforce the attendance of a witness at a hearing and to compel a witness to produce records and things under certain statutes.

Requests for a summons should be made in writing and include the following information:

(a) the name and address of the witness;

(b) the reasons why the person's attendance at the hearing is required (e.g., Mr. Smith was the surveyor who determined the boundary of the Crown land. He will confirm that the trail was (was not) constructed on Crown land); and

(c) the attempts made to have the witness voluntarily attend the hearing and/or provide the documents or things.

If production of documents or other items is requested, a reasonably detailed description of the documents or items should be included that would enable a reasonable person to know what evidence is being sought, along with the reasons why such materials are relevant to the subject matter of the appeal.

Where sufficient detail is not provided in the request, the Commission may ask for additional information.

In deciding whether to issue a summons, the Commission will consider whether the information sought to be obtained through this person is relevant to the appeal, whether that person is reasonably likely to be able to supply it and any other factors the Commission considers relevant.

If a summons is granted, the party requesting the summons will be responsible for serving the summons on the witness within a reasonable time before the witness is required to appear.

A person (witness) who is subject to a summons may object to the summons by applying to the Commission to have the summons vacated. The application may be made before or during the hearing. If the Commission is satisfied that the evidence sought from the person subject to the summons is not relevant, is protected by a privilege at law, or the person is not able to supply the evidence sought, the Commission may cancel or vary the summons.

Where a person fails to comply with a summons, that person may be liable for contempt.

Interim orders

Under certain statutes, the Commission has the authority to issue interim orders.

To request an interim order, a party must apply to the Commission, in writing, setting out the type of order sought and the reasons for the order.

The Commission will decide whether the application will be conducted in writing or orally. If the application it is to be heard orally, the Commission will decide whether it will be heard during a pre-hearing conference, or as a separate matter. The Commission will notify all other parties of the application and provide them with an opportunity to make submissions regarding the application.

Where an interim order is authorized and issued by the Commission and a party fails or refuses to comply with the order, the Commission, or any other party to an appeal, may apply to the Supreme Court for an order:

(a) directing the person to comply with the order, and

(b) directing the directors and officers of the person to cause the person to comply with the order.

Site visits

Priort o or during a hearing the Commission may, on its own initiative or at the request of a party, schedule a site visit. If a party wishes to schedule a site visit, the request should be made as early as possible as additional time may be required to accommodate the visit in the hearing schedule.

Postponement of the hearing

The Commission will only grant a postponement of a hearing where all parties to the appeal consent to the postponement, or where the party requesting a postponement can show that special circumstances exist which justify postponing the hearing to a later date.

To obtain a postponement, a party should make a request to the Commission, in writing, providing the Commission with the following information:

(a) the reasons for a postponement;

(b) the length of postponement (what is the next date available); and

(c) whether the other parties to the appeal consent to the postponement.

In deciding whether to grant a postponement, the Commission will consider the adequacy of the reasons for the postponement, the position of the other parties on the application, the prejudice to the other parties, and any environmental impacts that may result from a postponement of the hearing.

Evidence

General

In an oral hearing, each party will have the right to present evidence to support its case. Evidence is anything that has the potential of establishing or proving a fact including oral testimony, written records, demonstrations, physical objects, etc. It does not include argument or submissions made by a party for the purpose of persuading or convincing the Commission to decide the case a particular way.

While most of the information under this heading relates primarily to oral hearings rather than to hearings conducted in writing, the principles involved in weighing evidence and applying the correct burden of proof are common to all methods of appeal hearings.

Admissibility and exclusion of evidence

The rules of evidence used in a hearing are less formal than those used in a court. In general, the Commission can admit any oral or documentary evidence that is:

(a) relevant; and

(b) not privileged or restricted by another statute.

Relevant evidence can be described as evidence (oral or written) that will shed some light on a disputed matter or tends to prove or disprove a fact in issue. The Commission may admit hearsay and circumstantial evidence if it is considered relevant. The amount of weight the evidence will receive from the Commission depends on the degree to which it is relevant to the issues in the appeal and its reliability.

The Commission may also exclude evidence. This will normally occur when the evidence is of minimal relevance, may prejudice the other parties, confuse the issues, or is a repetition of evidence already presented.

Before the Commission excludes any evidence, parties will be offered an opportunity to explain why the evidence they are seeking to introduce is relevant or significant and should not be excluded. If evidence is limited or excluded, the Commission will advise the parties of its reasons for doing so.

All evidence admitted during the hearing as relevant will be assessed by the Commission member(s) conducting the appeal to determine what weight, if any, should be given to it before making their decision.

New Evidence

In general, the Commission may allow evidence to be presented in a hearing that was not before the previous decision-makers. This is subject to the considerations mentioned above under "Admissibility and exclusion of evidence."

Affidavit Evidence

In special circumstances, the Commission may allow a witness to provide affidavit evidence if the witness is unable to appear at the hearing to give oral testimony.

Expert evidence

As stated in section 4.4.1 under the heading "Notification of expert evidence" (above), an expert witness is a person who, through experience, training and/or education, is qualified to give an opinion on certain aspects of the subject matter of the appeal. To be an "expert" the person must have knowledge that goes beyond "common knowledge.

Experts must be qualified by the Commission before giving their opinion. Each party will have an opportunity to cross-examine a proposed expert and make submissions before the Commission makes its determination on qualifications.

If a person is not found to be qualified to give opinion evidence on a particular subject matter, the Commission may still receive the witness's evidence. The Commission will determine what weight should be given to each witness's testimony. The qualifications and experience of the witness will be a factor in determining the weight to be given to that witness's testimony.

Witness panels

The Commission may permit evidence to be given by a number of witnesses sitting as a panel. This will normally be allowed when the testimony of two or more witnesses is interconnected and the evidence will be more understandable if the witnesses are able to give their evidence in a chronological fashion. Cross-examination will not take place until all the witnesses on the panel have presented their evidence-in-chief.

The main restriction on this type of format is that the witnesses cannot discuss the answers to questions with the other witnesses on the panel. Each witness must give his or her evidence without consultation with the other panel witnesses.

Commission's authority to obtain evidence

In some hearings the Commission may find that it does not have the necessary expertise to properly consider the appeal. In such cases, certain statutes authorize the Commission to retain, call and hear its own expert witness.

In deciding whether to call on an expert witness the Commission will consider the complexity of the evidence being presented, the ability of the various parties to the appeal to present expert evidence on their own, the public interest and any other relevant factors.

If the Commission calls an expert to testify, all parties will be given prior notice of the expert in accordance with this Manual and will have an opportunity to cross-examine the expert.

Receipt of new evidence after the hearing is closed

Once the record is closed, no additional evidence will be accepted unless the Commission decides that the evidence is material to the issues, there are good reasons for the failure to produce it in a timely fashion, and acceptance of such evidence is in accordance with the principles of natural justice and procedural fairness.

The Hearing

Swearing-in

Witnesses, including parties to the appeal, will be asked to give their evidence under oath or affirmation that their evidence will be true.

Record of the hearing

An official reporter records all Commission hearings. Taping of Commission proceedings by anyone other than an official recorder is not permitted unless approved by the Commission.

Role of the panel chair

The member of a panel who has been designated the chair of that panel will be responsible for the general conduct of the appeal hearing.

Documents as evidence

If a party will be referring to a document that was not provided to the Commission and all parties prior to the hearing, sufficient copies of the document must be brought to the hearing for the Commission and all other parties.

Documents entered into evidence at the hearing will be marked as an exhibit to the hearing.

Procedure at the hearing

Although the degree of formality of a hearing may vary depending on the Commission panel and the parties, the following format will generally be followed:

1. The chair of the panel will begin the hearing by identifying the members of the Commission conducting the appeal and the recorder appointed to record the proceedings.

2. The chair will state the statutory authority for the Commission to hear the appeal and identify the determination (decision) that is being appealed. The chair may also clarify with the parties the precise issue(s) to be decided in the appeal.

3. The chair will invite those parties in attendance to introduce themselves for the record.

4. The chair will review the procedures that will apply at the hearing in connection with the presentation of evidence and the role of the intervenor (where invited or permitted to take part). Where there are multiple appellants, respondents, third parties and/or intervenors, the order for presenting their respective cases will also be addressed. The chair may make a statement regarding the scope of evidence that will be acceptable and other limitations as may be applicable.

5. The parties will be given an opportunity to confirm or clarify their understanding of the matter at hand and make any preliminary objections or requests.

6. The chair will then ask the parties for their opening statements in the following order:

   (1) appellant

   (2) respondent

   (3) third party(s)

   The appellant's opening statement is to include the grounds for appeal, the remedy (decision) sought, the names of witnesses (if any) to be called and the approximate time required to put its case before the Commission. The respondent and third party's opening statement should include the remedy (decision) sought, the names of witnesses (if any) to be called and the approximate time required to put their cases before the Commission.

7. The chair will advise the appellant to proceed with the presentation of its evidence. The appellant's witnesses may be cross-examined by the respondent and the third party (if present). Members of the Commission may also ask the witnesses questions. Additional information given in response

to questions asked by the Commission is subject to re-examination by the parties to the appeal.

8. The chair will advise the respondent to proceed with the presentation of its evidence. The respondent's witnesses may be cross-examined by the appellant and the third party (if present). Members of the Commission may also ask the witnesses questions. Additional information given in response to questions asked by the Commission is subject to re-examination by the parties to the appeal.

9. The chair will advise the third party (if present) to proceed with the presentation of its evidence. The third party's witnesses may be cross-examined by the appellant and the respondent. Members of the Commission may also ask the witnesses questions. Additional information given in response to questions asked by the Commission is subject to re-examination by the parties to the appeal.

10. The appellant may apply to the Commission for the opportunity to call reply evidence. The application will only be granted if the respondent or third party have called evidence that could not reasonably be anticipated by the appellant.

11. The chair will request the parties to present a closing statement (argument) at the conclusion of the presentation of all the evidence**. The order of presentation is as follows:

    (1) appellant

    (2) respondent

    (3) third party

    (4) reply by appellant

    No new evidence will be accepted in the closing statement.

**	In some circumstances the chair will allow the parties to make their closing submissions to the Commission in writing.

12. The chair will advise parties to the appeal that the hearing of evidence is concluded and the record is closed.

Intervenors will be allowed to participate in the hearing to the extent initially authorized by the Commission.

Adjournments

An adjournment is a discontinuation of a hearing that is in progress. The Commission will make every effort to complete a hearing within the time scheduled. However, if a hearing is not concluded within the allotted time, a party is "surprised" by previously undisclosed evidence or another problem arises, the Commission may exercise its discretion to adjourn the proceedings until a later date.

Where a party requests an adjournment, the Commission will consider the following:

(a) the views of the other parties;

(b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;

(c) whether the adjournment is required to provide a fair opportunity to be heard;

(d) the degree to which the need for the adjournment arises out of the intentional actions or the neglect of the participant seeking the adjournment;

(e) any prejudice to a participant resulting from the adjournment which cannot otherwise adequately be compensated for, balanced against the prejudice to the participant seeking the adjournment if the adjournment is not granted and which cannot be otherwise adequately compensated for; and

(f) any other factors which may be relevant.

Role of precedent (Previous decisions of the Commission)

Although the Commission may be bound by the decisions of certain courts, it is not required to follow (is not bound by) its past decisions or the decisions of other administrative agencies. While prior decisions of the Commission may indicate how the Commission will view particular types of cases, as a matter of law it must decide each case on its own merits.

Burden of proof

The general rule is that the burden or responsibility for proving a fact is on the person who asserts it. The fact is to be proved on a "balance of probabilities.

Public Access

All hearings are open to the public. The Commission has no authority to exclude members of the public.

Media coverage

Radio, television, filming, videotaping or recording of Commission proceedings may be permitted at the discretion of the Commission, subject to any terms and conditions the Commission may impose.

Permission to do any of the above should be sought prior to the commencement of the hearing.

4.5 Costs

All of the statutes authorizing an appeal to the Commission give the Commission the power to order a party or intervenor to pay another party or intervenor any or all of the actual costs in respect of the appeal.

A party seeking costs may make a submission to the Commission with respect to an award of costs at the conclusion of a hearing. The Commission will not make an order for costs unless a party requests that it be awarded costs. However, the Commission may, on its own initiative, ask a party whether it seeks costs. The Commission will not order a party to pay costs unless it has first given that party an opportunity to make submissions on this issue.

The Commission does not follow the civil court practice of "loser pays the winner's costs". The Commission has adopted a policy that costs should only be awarded in special circumstances. Those circumstances include:

(a) where, having regard to all of the circumstances, an appeal is brought for improper reasons or is frivolous or vexatious in nature;

(b) where the action of a participant or the failure of a participant to act in a timely manner resulted in prejudice to any of the other participants;

(c) where a participant, without prior notice to the Commission, fails to attend a hearing or to send a representative to a hearing when properly served with a Notice of Hearing;

(d) where a party unreasonably delays the proceeding;

(e) when a party's failure to comply with an order or direction of the Commission has resulted in prejudice to another party; and

(f) where a party has continued to deal with issues which the Commission has found to be irrelevant.

The Commission is not bound to order costs when one of the above-mentioned examples occurs, nor does the Commission have to find that one of the examples must have occurred to order costs.

If costs are ordered, the Commission will ask for submissions with respect to the amount of actual costs incurred. The Commission may allow the submissions to be made orally or in writing.

Where the Commission has ordered costs, the order may be filed in a court registry at which time it will have the same effect as an order of the court for the recovery of a debt in the amount stated. All proceedings may be taken as if the order were an order of the court.

4.6 Decisions

Powers of the Commission

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred and decide between the rights of parties.

The powers of the Commission on an appeal are set out in various statutes authorizing appeals to the Commission. In general, the Commission may:

(a) confirm, vary or rescind the decision appealed from, or

(b) refer the matter back to the decision-maker with or without directions.

There may be additional powers set out in the statute under which the appeal is filed, and the individual statute allowing the appeal to the Commission should be reviewed to determine whether there are additional powers that the Commission may exercise on an appeal.

Where an oral hearing has been conducted, the Commission will not normally make its decision at the end of the hearing. The Commission will issue its decision, in writing, within any prescribed time frames. In the absence of a prescribed time frame, the Commission will make every effort to have a decision to the parties within three months of the completion of the oral hearing or written submissions.

If an oral decision is rendered at the conclusion of an oral hearing, the Commission will provide full written reasons within a reasonable time following the hearing.

When a hearing has been conducted by written submissions, a final decision will be given in writing, with reasons, within the prescribed period, if any, or within a reasonable time after the last submissions were delivered to the Commission. As with oral hearings, the Commission will make every effort to have a decision to the parties within three months of the completion of the hearing.

Copies of the decision will be given to the parties, the intervenors, and any ministers as required by the statutes or regulations.

A copy of a decision will be faxed to a party upon request.

Copies of Forest Appeals Commission decisions are also available upon request from the Commission office and from the following libraries:

- Ministry of Forests Library
- University of British Columbia Law Library
- BC Courthouse Library Society
- Westcoast Environmental Law Library
- University of Victoria Law Library

Decisions are also located on the Internet (see section 2.0 under "Commission Office").

Enforcement of decisions

The Commission does not have the power to enforce its decisions directly. However, enforcement is provided for under certain statutes the Commission, or a party to the appeal may apply to the Supreme Court for an order:

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

The Commission will not make an application to the court to enforce its decisions and orders except in special circumstances.

Under the *Wildfire Act*, if the Minister considers that a person isn ot complying or has not complied with an order made under that Act, the Minister may apply for a court order directing the person (or its directors and officers in the case of corporations and partnerships) to comply with the order or to cease violating the order.

Appeals from Commission decisions

The *Code* provides that a party to the appeal or the Minister of Forests may appeal the decision of the Commission to the Supreme Court on a question of law or jurisdiction. The *Wildfire Act* adopts the appeal sections of the *Code* (s. 141).

The *Forest Act* states that the appellant or the Minister of Forests may appeal the decision of the Commission to the Supreme Court on a question of law or jurisdiction.

Similarly, under the *Private Managed Forest Land Act*, a party to the appeal may appeal the decision of the Commission to the Supreme Court on a question of law or jurisdiction.

In all cases, the appeal must be filed within three weeks after being served with the Commission decision.

The Supreme Court is authorized to issue a stay against the Commission's decision, "in whole or in part." According to the *Code*, the *Forest Act*, and the *Private Managed Forest Land Act*, a decision of the Supreme Court may be further appealed to the Court of Appeal, with leave of the Court of Appeal.

5.0 ADDITIONAL PROVISIONS

Representatives/Legal counsel

Parties are permitted to have a spokesperson or representative speak on their behalf. The spokesperson or representative does not have to be a lawyer.

A party to an appeal may be represented by a lawyer, but this is not required. The Commission will make every effort to keep the process open and accessible to unrepresented parties.

Audio-Visual Requirements

If a party wants to use an overhead projector, flip chart, VCR, etc., at a hearing, that party should confirm the availability of such items with the venue scheduled for the hearing (e.g. hotel, Commission office) and make arrangements accordingly.

Visually impaired, Hearing impaired or Disabled participants

If a party or a witness is visually or hearing impaired, or has any other disability (e.g., reading or writing) and services are required to assist the participant, that party must arrange for such services at the hearing.

Other languages

If a party or a witness would prefer to give evidence in another language and to have the evidence of others interpreted into that other language, that party must arrange for such services at the hearing.

Failure to attend proceedings

Where notice of a preliminary meeting, pre-hearing conference, hearing by written submissions or an oral hearing has been properly given and a party fails to attend or does not provide its submissions, the Commission may proceed in that party's absence, or without its submissions.

Withdrawing or abandoning an appeal

An appellant may withdraw his or her appeal by so informing the Commission in writing.

Transcripts

Under the Regulation, any person may apply to the Commission for a transcript of Commission proceedings. The cost of a transcript will be borne by the applicant(s).

Legal counsel to the Commission

The Commission may appoint and direct its legal counsel to advise the Commission on matters of law and procedure and on such other matters as the Commission requests.

NOTICE OF APPEAL

TO: Forest Appeals Commission
Fourth Floor, 747 Fort Street
Victoria, BC V8V 9V1

NAME OF APPELLANT(S):

[include full name, address, telephone number and facsimile number, if available]

APPELLANT'S REPRESENTATIVE (if any):

[include full name, address, telephone number and facsimile number, if available]

ADDRESS FOR SERVICE OF APPELLANT(S):

[specify address for delivery of all correspondence and documents related to the appeal]

DETERMINATION BEING APPEALED:

[include determination date, number, subject matter and name of reviewer]

GROUNDS FOR APPEAL:

1. [please state why the appellant objects to the
2. determination, as reviewed, in detail; attach
3. additional pages as necessary]

...

RELIEF SOUGHT:

[what you want the Commission to order at the end of the appeal]

Important: Please include a copy of the original decision and determination of the reviewer being appealed.

Signature

Date